

CHAPTER 93

S.B. No. 1568

AN ACT

relating to shareholder standing after a merger.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Section 21.552, Business Organizations Code, is amended to read as follows:

Sec. 21.552. STANDING TO BRING PROCEEDING. ~~[(a)]~~ A shareholder may not institute or maintain a derivative proceeding unless:

(1) the shareholder:

(A) was a shareholder of the corporation at the time of the act or omission complained of; or

(B) became a shareholder by operation of law from a person that was a shareholder at the time of the act or omission complained of; and

(2) the shareholder fairly and adequately represents the interests of the corporation in enforcing the right of the corporation.

~~[(b) To the extent a shareholder of a corporation has standing to institute or maintain a derivative proceeding on behalf of the corporation immediately before a merger, Subchapter J or Chapter 10 may not be construed to limit or terminate the shareholder's standing after the merger.]~~

SECTION 2. This Act takes effect September 1, 2011.

Passed the Senate on April 18, 2011: Yeas 31, Nays 0; passed the House on May 5, 2011: Yeas 143, Nays 0, two present not voting.

Approved May 19, 2011.

Effective September 1, 2011.

CHAPTER 94

S.B. No. 1716

AN ACT

relating to voidability of contracts procured through and liability arising from conduct constituting barratry; providing a civil penalty.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Section 82.065, Government Code, is amended to read as follows:

Sec. 82.065. ~~[CONTINGENT FEE]~~ CONTRACT FOR LEGAL SERVICES. (a) A contingent fee contract for legal services must be in writing and signed by the attorney and client.(b) Any ~~[A contingent fee]~~ contract for legal services is voidable by the client if it is procured as a result of conduct violating the laws of this state or the *Texas Disciplinary Rules of Professional Conduct* of the State Bar of Texas regarding barratry by attorneys or other persons.(c) *An attorney who was paid or owed fees or expenses under a contract that is voided under this section may recover fees and expenses based on a quantum meruit theory if the client does not prove that the attorney committed barratry or had actual knowledge, before undertaking the representation, that the contract was procured as a result of barratry by another person. To recover fees or expenses under this subsection, the attorney must have reported the misconduct as required by the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas, unless:*(1) *another person has already reported the misconduct; or*

(2) *the attorney reasonably believed that reporting the misconduct would substantially prejudice the client's interests.*

SECTION 2. Subchapter C, Chapter 82, Government Code, is amended by adding Section 82.0651 to read as follows:

Sec. 82.0651. CIVIL LIABILITY FOR PROHIBITED BARRATRY. (a) A client may bring an action to void a contract for legal services that was procured as a result of conduct violating the laws of this state or the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas regarding barratry by attorneys or other persons.

(b) A client who prevails in an action under Subsection (a) shall recover from any person who committed barratry:

(1) all fees and expenses paid to that person under the contract;

(2) the balance of any fees and expenses paid to any other person under the contract, after deducting fees and expenses awarded based on a quantum meruit theory as provided by Section 82.065(c);

(3) actual damages caused by the prohibited conduct; and

(4) reasonable and necessary attorney's fees.

(c) A person who was solicited by conduct violating the laws of this state or the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas regarding barratry by attorneys or other persons, but who did not enter into a contract as a result of that conduct, may file a civil action against any person who committed barratry.

(d) A person who prevails in an action under Subsection (c) shall recover from each person who engaged in barratry:

(1) a penalty in the amount of \$10,000;

(2) actual damages caused by the prohibited conduct; and

(3) reasonable and necessary attorney's fees.

(e) This section shall be liberally construed and applied to promote its underlying purposes, which are to protect those in need of legal services against unethical, unlawful solicitation and to provide efficient and economical procedures to secure that protection.

(f) The provisions of this subchapter are not exclusive. The remedies provided in this subchapter are in addition to any other procedures or remedies provided by any other law, except that a person may not recover damages and penalties under both this subchapter and another law for the same act or practice.

SECTION 3. (a) Section 82.065, Government Code, as amended by this Act, applies only to a contract entered into on or after the effective date of this Act. A contract entered into before the effective date of this Act is governed by the law in effect immediately before the effective date of this Act, and that law is continued in effect for that purpose.

(b) Section 82.0651, Government Code, as added by this Act, does not apply to prohibited conduct that occurred before the effective date of this Act. Prohibited conduct that occurred before the effective date of this Act is governed by the law that applied to the conduct immediately before the effective date of this Act, and that law is continued in effect for that purpose.

SECTION 4. This Act takes effect September 1, 2011.

Passed the Senate on April 7, 2011: Yeas 31, Nays 0; passed the House on May 5, 2011: Yeas 142, Nays 0, two present not voting.

Approved May 19, 2011.

Effective September 1, 2011.